

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)
)
)
NATIONAL RIFLE) Case No.
ASSOCIATION OF AMERICA) 21-30085-hdh-11
AND SEA GIRT, LLC,)
)
Debtors.)

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
HONORABLE PHILLIP JOURNEY
MARCH 18, 2021

CONFIDENTIAL PURSUANT TO PROPOSED PROTECTIVE ORDER

1 REMOTE ORAL AND VIDEOTAPED DEPOSITION OF HONORABLE
2 PHILLIP JOURNEY, produced as a witness at the instance
3 of the New York State Office of the Attorney General,
4 and duly sworn, was taken remotely in the above-styled
5 and numbered cause on the 18th day of March, 2021, from
6 4:10 p.m. to 7:57 p.m., via Zoom, before Julie C.
7 Brandt, RMR, CRR, and CSR in and for the State of Texas,
8 reported by machine shorthand, with the witness located
9 in Wichita, Kansas, pursuant to the Federal Rules of
10 Civil Procedure and the provisions stated on the record
11 or attached hereto.

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1 changes made for that version?

2 A. I remember there were two bylaws events that
3 were voted on in the October 24th meeting. I do not
4 recall the topics. I do recall that I voted for both of
5 them.

6 Q. Okay. And now let's go to that board meeting,
7 and I want to ask you when the board broke up to have
8 the executive session relating to the Wayne LaPierre
9 employment contract, were you present in that executive
10 session?

11 A. Yes.

12 Q. And can you tell the Court, was the sole
13 purpose of that executive session to review and approve
14 the employment contract of Wayne LaPierre?

15 MR. WATSON: Objection. There may be a
16 privilege here, but I'll let the NRA assert that
17 privilege.

18 MR. CICILIANO: Yeah, I would likewise
19 object to the extent that it calls for the disclosure of
20 attorney/client communications or work product. I would
21 direct you not to answer on behalf of the NRA, but
22 generally --

23 MR. WATSON: I'm sorry. Are you done,
24 Dylan?

25 MR. CICILIANO: Yes.

1 MR. WATSON: I am going to instruct you
2 not to answer that, Judge --

3 THE WITNESS: Thank you.

4 MR. WATSON: -- on that basis.

5 Q. (BY MR. PRONSKE) So Judge Journey, are you
6 refusing to answer that question?

7 A. I'm sorry, what?

8 Q. Are you refusing to answer that question on
9 your attorney's advice?

10 A. I think I should rely on my counsel's advice,
11 yes.

12 Q. Okay. So were -- was -- when that committee
13 broke up -- broke into session, was the full board told
14 that this -- that there was going to be an executive
15 session?

16 A. Generally, an executive session is moved by
17 one of the members of the board and then voted on
18 whether they should go into executive session. So it's
19 not like anybody tells you except by making the motion.

20 Q. Okay. And that motion was made in the full
21 board session. Is that right?

22 A. Yes.

23 Q. And the full board would have had all of the
24 board of directors and other individuals that would
25 have -- there would have been attorneys and then there

1 would have been other individuals there. Is that
2 correct?

3 A. Yes. There were -- there's the board counsel,
4 Wit. And then, of course, there's the general counsel,
5 the secretary. They were both present, and I believe
6 Mr. Brewer was present also. I know he came in and out
7 of the room a couple times.

8 Q. Would there -- would that -- would the full
9 board session be a session that would be considered
10 privileged?

11 MR. CICILIANO: Objection, calls for a
12 legal conclusion.

13 Q. (BY MR. PRONSKE) Or just the executive
14 session?

15 MR. WATSON: I'm going to object. It
16 does call for a legal conclusion.

17 Q. (BY MR. PRONSKE) You can answer, if you know.

18 MR. WATSON: You can answer. You can go
19 ahead and answer, Judge.

20 A. Okay. What was the question again?

21 Q. (BY MR. PRONSKE) The question is is it just
22 the executive sessions that are considered to be
23 privileged, or is the full board session also considered
24 privileged?

25 A. I --

1 MR. WATSON: I'm going to object. Same
2 objection.

3 Before you answer, Judge, let me object.

4 THE WITNESS: Okay.

5 MR. WATSON: Calls for a legal
6 conclusion.

7 But you can answer.

8 A. It's my understanding that the regular board
9 meeting is reflected in the minutes and, therefore, it's
10 not privileged because everybody has access to the
11 minutes.

12 Q. (BY MR. PRONSKE) Okay.

13 A. So I believe the privilege extends to the
14 executive session.

15 Q. Okay. So then I'm going to go back to my
16 original question that was objected to, which is did the
17 full board -- was the full board aware that there was
18 going to be an executive session where the sole issue to
19 be reviewed would be the Wayne LaPierre employment
20 contract?

21 MR. WATSON: Same objection, calls for
22 speculation. He can't testify to what the other board
23 members knew. He can only testify to what he observed
24 or his impression of what happened.

25 MR. CICILIANO: And I would further

1 object to the extent that it requires the judge to
2 actually opine as to what was discussed in a privileged
3 session in order to answer the question, as it
4 presupposes the privilege, the nature of the
5 communication.

6 Q. (BY MR. PRONSKE) You can answer the question.

7 A. The board goes into executive session when a
8 member of the board makes a motion and it's seconded,
9 and then the board votes on that motion. If the
10 board -- so someone would bring up the topic, and then
11 someone would say let's go into executive session, and
12 then the board votes, and they go into executive session
13 if it passes. I mean, it's not like they say we're
14 going to do this at that time and we'll be here.

15 Q. Was the board aware that there was going to be
16 an executive session where the Wayne LaPierre employment
17 contract was going to be discussed and approved?

18 MR. WATSON: Objection, asked and
19 answered or --

20 Could you restate the question, Gerrit?

21 A. I don't think there was any advance notice
22 like an agenda. You know, you all have copies of the
23 agenda. It doesn't say we're going into executive
24 session here.

25 Q. (BY MR. PRONSKE) Okay. Can you tell the

1 Court which attorneys were present in the executive
2 session to discuss the employment contract?

3 MR. CICILIANO: I would just object on
4 the same point to the nature of the question and
5 presupposing what was discussed.

6 You can answer who was at the executive
7 session, what attorneys.

8 A. I don't remember if Brewer was in the room
9 during that conversation, but I believe Mr. Frazer was.
10 He was there the entire time. And I believe board
11 counsel was present.

12 Q. (BY MR. PRONSKE) Is that William Davis?

13 A. Yes.

14 Q. Okay.

15 A. That's Wit. That's all I know, Wit. Yeah,
16 you're right, William Davis, okay.

17 Q. And was Sara Rogers present?

18 A. I'm not sure.

19 Q. Were there any staff members present in that
20 executive session?

21 MR. CICILIANO: Objection, vague.

22 A. You presume I know everybody. I don't know.

23 Q. (BY MR. PRONSKE) Okay. During that executive
24 session, were the members that were sitting in that
25 session provided with a copy of Mr. LaPierre's

1 employment contract to be approved?

2 A. They were not given a copy, no. There were
3 two copies at two tables, and you had to sit there and
4 read it and turn it back in.

5 Q. And did you go over and open that contract and
6 review it?

7 A. Yes, I read it.

8 Q. Was there a presentation made by someone with
9 respect to that contract?

10 A. Mr. Cotton was the -- is the first vice
11 president of the NRA, and as President Meadows was not
12 at the board meeting, he ran the meeting. So there was
13 another lawyer in the room, too, by the way. You know,
14 you'll have to ask him what he said.

15 Q. Okay. And was Mr. LaPierre present in that
16 session?

17 A. No. No.

18 Q. This morning --

19 A. Mr. LaPierre came for about three minutes and
20 left and did not return to the board meeting.

21 Q. Okay. So he attended the full board meeting
22 or this executive session?

23 A. He was not in either of the executive
24 sessions.

25 Q. Okay. So Mr. Frazer testified this morning he

1 was in that executive session. Is he just incorrect on
2 that?

3 MR. WATSON: Objection, assumes facts not
4 in evidence. Judge Journey wasn't present this morning
5 at Mr. Frazer's deposition.

6 Q. (BY MR. PRONSKE) Let me rephrase that.

7 If Mr. Frazer said at a deposition this
8 morning that Mr. LaPierre was in that session, would he
9 be incorrect?

10 A. My recollection is that the way the board
11 meeting runs is we all go in and we do the roll call and
12 then the officers give us their reports, like the EVP,
13 Mr. LaPierre. And he came in, gave his report. It was
14 very short. And he left. And I don't remember seeing
15 him enter the room again --

16 Q. Okay.

17 A. -- during the board meeting.

18 So you know, maybe Frazer -- but I'm looking
19 forward and Frazer is looking back. So he may have
20 entered behind me and I had not seen it. I don't know.
21 All I know is what I saw in front of me.

22 Q. Was there a discussion in that session of
23 authority to file for bankruptcy?

24 MR. CICILIANO: I would just object
25 pursuant to the attorney/client privilege and direct the

1 witness not to answer.

2 MR. WATSON: And I, too, am going to
3 direct you not to answer that, Judge Journey.

4 THE WITNESS: Okay.

5 A. Okay. I can't tell you what they did say, but
6 I think I can tell you what they didn't say. And nobody
7 during that --

8 MR. CICILIANO: I would object -- I would
9 object, Judge, and direct you that what was said or was
10 not said is covered by the attorney/client privilege,
11 and I would direct you not to answer. The NRA is not
12 waiving that privilege.

13 THE WITNESS: Okay.

14 A. Nobody said the word "bankruptcy."

15 Q. (BY MR. PRONSKE) Okay. And did anyone say
16 the word -- and let me ask you this question. As far as
17 not answering the question regarding a discussion about
18 authority to file bankruptcy, are you refusing to answer
19 that question?

20 A. No. You know, I think my motion speaks for
21 itself.

22 Q. Okay.

23 A. Doesn't it?

24 MR. CICILIANO: Mr. Pronski, we ought to
25 be clear here that the privilege is not his to assert or

1 to waive. The privilege is for the NRA to assert and
2 waive. And if you are going to insist on getting -- and
3 with respect to Mr. Journey, he may want to talk about
4 it.

5 But to the extent you're going to insist that
6 he break or attempt to break the privilege that's owned
7 by the NRA, I will have to shut the deposition down to
8 seek a protective order under Rule 30G or 30D.

9 I don't intend to interfere with the rest of
10 his testimony. So if that's your intent to do so, I say
11 we draw a box around this and move on to other subject
12 matters.

13 MR. PRONSKE: Well, I think you're going
14 to have a hard time shutting the deposition down because
15 I'm insisting on something when all I've done,
16 Mr. Ciciliano, is ask questions, and I am going to
17 continue to ask questions, and I am going to ask him --
18 when he doesn't want to answer a question, I am going to
19 ask him if he refuses to answer the question. If you
20 interpret that as insisting, then by all means file
21 whatever you need to file.

22 Q. (BY MR. PRONSKE) Judge Journey, can you tell
23 the Court, you've said that the word "bankruptcy" was
24 not used in that session. Was the word "Chapter 11"
25 used in that session?

1 MR. CICILIANO: I am going to object and
2 direct you not to answer pursuant to the attorney/client
3 privilege, and if you insist on answering, the
4 deposition will be terminated right now.

5 Q. (BY MR. PRONSKE) Are you refusing to answer
6 that question, Judge Journey?

7 MR. WATSON: I am going to direct you not
8 to answer, Judge Journey.

9 THE WITNESS: Okay. Okay. All right, I
10 will follow your lead, Mr. Watson.

11 Q. (BY MR. PRONSKE) Was the word
12 "reorganization" used in that executive session?

13 MR. CICILIANO: I will once again object
14 and direct the witness not to answer pursuant to the
15 attorney/client privilege.

16 MR. WATSON: I will direct you not to
17 answer, Judge Journey.

18 THE WITNESS: Thank you.

19 Q. (BY MR. PRONSKE) Are you refusing to answer,
20 Judge Journey?

21 A. I reluctantly am, yeah.

22 Q. Was the word -- were either the word "court"
23 or the word "filing" used in that executive session?

24 MR. CICILIANO: I will once again object
25 pursuant to the attorney/client privilege and direct the

1 judge not to answer.

2 MR. WATSON: Judge, don't answer the
3 question. I'm instructing you not to answer.

4 THE WITNESS: Okay.

5 A. I'm sorry, I have to say no, I can't answer.

6 Q. (BY MR. PRONSKE) Judge Journey, as you -- as
7 you know, the LaPierre employment agreement says -- that
8 was approved says that Wayne LaPierre is empowered,
9 quote, to reorganize or restructure the affairs of the
10 association for purposes of cost minimization,
11 regulatory compliance or otherwise, closed quote. Are
12 you aware of that language?

13 A. Yes.

14 Q. Was there any discussion during the executive
15 committee session whatsoever regarding that sentence of
16 the agreement?

17 MR. CICILIANO: I am going to object
18 pursuant to the attorney/client privilege and direct the
19 judge not to answer.

20 MR. WATSON: Yeah, Judge, don't -- I'm
21 going to instruct you not to answer that question.

22 THE WITNESS: All right. That's fine.

23 Q. (BY MR. PRONSKE) Your testimony, I believe,
24 Judge Journey, is that you did read the entire agreement
25 before it was approved?

1 A. That's correct.

2 Q. As a board member of the NRA, do you believe
3 that those -- that that sentence approved or authorized
4 the filing of a bankruptcy by the NRA?

5 MR. CICILIANO: I would just object, and
6 to the extent that your belief is based on what has been
7 told to you by the counsel of the NRA, I would direct
8 you not to answer. To the extent you have an individual
9 recollection, you may.

10 MR. WATSON: Judge Journey, you can
11 answer based on your -- based on your knowledge or
12 observations.

13 THE WITNESS: Okay.

14 A. So what was the question again? You guys, I'm
15 having too much fun watching y'all. I'm sorry, I'm
16 distracted, okay.

17 Q. (BY MR. PRONSKE) The question, Judge Journey,
18 is that that sentence that I read from the employment
19 contract, do you believe that those words authorized or
20 approved a bankruptcy filing of the NRA?

21 A. You know, when I read that -- we reorganize
22 the NRA all the time. We create committees, and we do
23 all kinds of things that are not what would have been
24 contemplated as what occurred. So, you know, I did
25 not -- I'm a little mad at myself because I didn't make

1 that link.

2 Q. You didn't make that connection. There was
3 certainly no discussion of bankruptcy that would have
4 allowed you to make that connection. Is that right?

5 MR. CICILIANO: I am going to object
6 pursuant to the attorney/client privilege and direct the
7 witness not to answer what occurred in the executive
8 session.

9 MR. WATSON: Yes, Judge, don't -- don't
10 answer the question.

11 A. Yeah, I don't have to answer that one. That's
12 self-apparent.

13 Q. (BY MR. PRONSKE) So to be apparent and to be
14 clear, your testimony is, am I correct, Judge Journey,
15 that you did not make any correction -- any correlation
16 in your mind between that sentence of the employment
17 contract or any other sentence in the employment
18 contract and the filing of a bankruptcy. Is that
19 correct?

20 MR. CICILIANO: I would just to -- I
21 would just object. To the extent that that requires you
22 to divulge what's in your mind with respect to what was
23 informed to you by counsel of the NRA, I would direct
24 you not to answer to that extent.

25 MR. WATSON: Judge, you can answer the

1 question based upon what you know and your recollection.

2 THE WITNESS: Thank you.

3 A. You know, I just want to say "sustained" or
4 "overruled." I don't know.

5 But anyway, you know, there was -- there was
6 no hint in my little feeble mind that anyone was
7 contemplating bankruptcy.

8 Q. (BY MR. PRONSKE) All right. And was the
9 resolution to approve the employment contract ultimately
10 adopted by the executive session?

11 A. It was adopted, and then it was reflected in
12 the minutes when we came out.

13 Q. And was that adoption unanimous?

14 A. I -- I know I voted for it, but I'm not sure.
15 I suppose so. I don't remember anybody sticking
16 their -- else sticking their head out of the trench.

17 Q. Right.

18 Do you -- have you had any discussions with
19 board members about the bankruptcy filing after it was
20 filed?

21 A. Sure.

22 Q. How many would you say you've spoken with?

23 A. (Laughter.) I talk to a lot of people. I
24 mean, you know, I called the US Trustee for Kansas, who
25 just retired who is a really good friend of mine. I

1 talked to him. I talked to lots of people after the
2 filing of the bankruptcy, sure.

3 Q. So can you -- let's drill down on that
4 conversation with the US Trustee. Can you tell me about
5 that conversation?

6 A. He is a really good friend, been my friend for
7 over 30 years, Ed Nazar. He just retired as the trustee
8 for the district of Kansas. And I talked to him about
9 the bankruptcy. And he was so kind. He sent me
10 mountains of research, and I learned all about
11 Chapter 11 in about four days.

12 Q. Did you have any discussion with that United
13 States trustee about any concerns that you had that that
14 bankruptcy was not authorized in the board meeting?

15 A. Yes.

16 MR. WATSON: Objection.

17 THE WITNESS: Sorry.

18 MR. WATSON: Objection. It calls for
19 speculation, and it calls for a legal conclusion based
20 upon -- to the extent it calls for a legal conclusion, I
21 am instructing him not to answer, but he can answer
22 generally as to what his understanding is of how
23 bankruptcy works.

24 Q. (BY MR. PRONSKE) Actually, that's not the
25 question. The question is what was discussed with the

1 US Trustee as far as the authorization issue?

2 A. That -- that was one of the questions, was how
3 corporations authorize the filing of a bankruptcy.

4 Q. What was the substance of that conversation
5 regarding authorization?

6 A. Oh, my gosh. That was so long ago. That was
7 like on January 16, you know. We had -- we had many
8 conversations over the next three days, because I would
9 seek clarification and he would send me more research.
10 I thought he was going to send me his Colyers and just
11 get it over with, you know.

12 Q. Did you tell that -- did you tell that US
13 Trustee during any of those conversations that you
14 believed that the filing of the bankruptcy by the NRA
15 was not authorized?

16 MR. WATSON: Objection, calls for a legal
17 conclusion.

18 You can answer.

19 A. That was my impression, yes, and that was what
20 I related to Mr. Nazar.

21 Q. (BY MR. PRONSKE) And did you tell the United
22 States Trustee during those conversations that the
23 filing of bankruptcy was not discussed in the board
24 meetings?

25 MR. CICILIANO: I would just object here.

1 First of all, I think you're mischaracterizing. He
2 wasn't the US Trustee.

3 But second of all, to the extent that you did
4 disclose anything covered by the attorney/client
5 privilege, I would direct you not to disclose it again.
6 That's not a waiver. You don't have the ability to
7 waive it.

8 THE WITNESS: Thank you. One thing I
9 would like to clarify --

10 MR. WATSON: I instruct you not to answer
11 the question, Judge.

12 THE WITNESS: I just want to make sure
13 they say the retired trustee, because he's retired and
14 playing with his grandkids in Kansas City, and that's
15 where I found him, you know. He -- he retired like six
16 months ago or something like that. He had been a
17 trustee for 30 years ago.

18 Q. (BY MR. PRONSKE) So are you refusing to
19 answer that question under advice of counsel?

20 A. I think we could go there for that, for this
21 one right now, yeah.

22 Q. Okay. Do you believe, Judge Journey, as a
23 board member that only the full board of directors of
24 the NRA can authorize a bankruptcy filing?

25 MR. WATSON: Objection, calls for legal

1 you say "those topics," what exactly are you --

2 A. The topics of the executive sessions.

3 Mr. Cotton was chairing the meeting.

4 Q. Was there anybody giving a presentation at
5 that executive session other than Mr. Cotton?

6 MR. CICILIANO: Objection to form.

7 A. I'm not certain. I am not certain on that.

8 Q. (BY MR. PRONSKE) And was Mr. Cotton -- I
9 understand Mr. Cotton is an attorney, but was he in his
10 capacity as attorney in that meeting? And if so, who
11 was he representing?

12 A. No, he was not acting as counsel. He was
13 acting as first vice president and chairing the meeting
14 because the president wasn't there, as I explained
15 before.

16 Q. Okay. And what did he say during that
17 presentation?

18 A. That is what happened in executive session
19 and --

20 MR. CICILIANO: Yeah, I would object
21 pursuant to attorney/client privilege and instruct you
22 not to answer.

23 MR. WATSON: Okay. Yeah, I am going to
24 instruct you not to answer.

25 MR. PRONSKE: It's not a conversation

1 between an attorney who is acting in the capacity as an
2 attorney and clients. Are you saying it's just because
3 of the presence of attorneys in that room?

4 MR. CICILIANO: No, Gerrit. I'm saying
5 because we have a declaration, as you well know, board
6 counsel who actually explains that they were all
7 discussing attorney/client privilege. So you may want
8 to beat around it and try to snip out portions. It's
9 not going to happen. I am directing him not to answer,
10 as is his counsel.

11 MR. PRONSKE: Who is the attorney that
12 you say was involved in that attorney/client discussion,
13 Mr. Ciciliano?

14 MR. CICILIANO: I believe the declaration
15 says William Davis, as well as counsel from Brewer.

16 MR. PRONSKE: And so just because an
17 attorney was present in the room, all discussions in
18 that executive session were privileged?

19 MR. CICILIANO: No. But if you actually
20 look at the declaration, what they say is that every
21 discussion they had in there was regarding legal advice.
22 So in that instance, yes.

23 MR. PRONSKE: So you're saying that
24 everything that happened in the executive session
25 regarding Wayne LaPierre's employment contract on

1 January 7th was privileged. Is that right?

2 MR. CICILIANO: For this one, for what
3 I'm seeing, absolutely.

4 MR. PRONSKE: Okay.

5 Q. (BY MR. PRONSKE) And Judge Journey, are you
6 refusing to answer the question based on Mr. Ciciliano's
7 advice?

8 MR. WATSON: Well, it's my advice. I am
9 instructing him not to answer.

10 Q. (BY MR. PRONSKE) Okay. Are you refusing to
11 answer the question based on advice of counsel?

12 A. I am going to defer to counsel, yes.

13 Q. When you said -- when you testified that
14 bankruptcy is not the disease but it's a symptom of the
15 disease, what is the disease?

16 A. I think the disease and its symptoms are
17 described in great detail in the New York Attorney
18 General and the Washington, D.C. Attorney General's
19 petitions. There are other things that I've read in
20 other cases that gave me pause also and concern.

21 Q. When you testified that there have been,
22 quote, so many resignations from the board, why do you
23 believe there have been so many resignations from the
24 board?

25 A. Well, it's part of the process to make the

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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